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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,945	05/11/2001	Michael L. Imundo	10420/15	6611

7590

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EXAMINER

COZART, JERMIE E

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 06/18/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/853,945

Applicant(s)

IMUNDO ET AL.

Examiner

Jermie Cozart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-16, and 18-22 is/are rejected.
- 7) ☒ Claim(s) 6 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7, 9, 10, 12-16, 18, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Richter.

Regarding claims 1 and 12, Richter discloses a method for repairing a sheet metal portion (4) of a structure (2), wherein a multi-axis digital measuring device (10) is oriented. The device (10) captures the image of the structure in at least two dimensions in order to reproduce a sheet metal repair part (4'). Richter also discloses measuring at least a portion of the structure (2) with the digital imaging device (10), saving the data generated in measuring the structure, and using the data to manufacture a sheet metal repair part (4'). See column 4, lines 38-59 for further clarification.

Regarding claims 2 and 13, Richter discloses adding additional data for use in automatically manufacturing the repair part (4'). The nominal geometry data of the blade (1) was at some point added to the computer in order to serve as a reference data when being compared with image data for the damaged part to be repaired.

Regarding claims 3 and 14, Richter discloses planning a process to manufacture the repair part (4'), which essentially are the steps used to create the repair part.

Regarding claims 4 and 15, Richter discloses installing the sheet metal repair part (4'). See column 5, lines 31-36 for further clarification.

Regarding claims 5 and 16, Richter discloses orienting the device (10) with respect to the structure (2) via an orienting feature of the structure such as a feature (tip portion) of the structure.

Regarding claims 7 and 18, Richter discloses automatically manufacturing comprising a multi-step process for material moving and material shaping. See column 4, line 53 – column 6, line 14.

Regarding claims 9 and 21, Richter discloses translating the data from a first format to a second format, in this case translating the image data to a corresponding output for the CNC control unit (12). See column 4, lines 48-52 for further clarification.

Regarding claims 10 and 20, Richter discloses a data manipulation step consisting of transferring data by delivering the data from the computer (11) to the CNC control unit (12). See column 2, lines 30-33 for further clarification.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8, 11, 19, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter in view of Flint.

Richter discloses all of the claimed subject matter except for transferring the repair part from a first workstation to a second workstation, or mounting a laser-scanning device on the multi-axis digital measuring device, wherein the laser is used to measure at least a portion of the structure with the multi-axis digital measuring device.

Flint discloses transferring an unfinished part (PFH) from a first workstation (second support) to a second workstation (third support) in order to build a duplicate product and match the color of the duplicated part to the original part, and mounting (meaning to arrange for use, see Webster's Collegiate Dictionary, tenth edition) a laser-scanning device, in order to record the topography of the object being scanned to produce a digitized signal. The laser is mounted on the multi-axis digital measuring device, wherein the laser is used to measure at least a portion of the structure with the multi-axis digital measuring device. See Figure 1 and columns 2 and 3 for further clarification.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to transfer unfinished repair part of Richter from a first workstation to a second workstation for additional finishing steps, in light of the teachings of Flint, in order to more effectively build a duplicate product and match the color of the duplicated part to the original part. It would also have been obvious to mount a laser-scanning device on the multi-axis digital measuring device of Richter, wherein the laser is used to measure at least a portion of the structure with the multi-axis digital measuring device, in light of the teachings of Flint, in order to accurately record the topography of the object being scanned to produce a digitized signal.

***Allowable Subject Matter***

5. Claims 6 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed 5/27/03 have been fully considered but they are not persuasive.

Applicant argues that Richter does not disclose a multi-axis digital measuring device on the basis that a camera is not a multi-axis measuring device.

In response, the Examiner maintains that Richter discloses a digital camera (10) the digital camera captures the image, wherein Richter states digital camera 10 captures the image of the end of the remaining blade portion 2 at the height h and provides data corresponding thereto to an image processing computer 11 which reinforces the concept of measuring the part and the information is transferred to the computer to perform the image processing technique. The digital camera essentially serves as the probe in order to provide the necessary information (e.g. *height and depth of remaining blade portion*) for the image processing computer (11).

In addition, Richter states at column 4, lines 38-48, *"In order to carry the above geometry evaluation, the existing actual geometry of the end of the remaining blade portion 2 at the standardized height is measured, preferably by means of an image processing technique, by which the actual geometry is numerically detected and analyzed, and the resulting data are used for the numeric control of the subsequent processing steps. For example as shown in FIG. 5, a*

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*camera such as a digital camera 10 captures the image of the end of the remaining blade portion 2 at the height h and provides data corresponding thereto to an image processing computer 11."*

By reading this description of the way in which the digital camera is used, it is apparently obvious that the digital camera clearly functions as a multi-axis digital measuring device and in addition the height and depth of the remaining blade portion is captured and measured by the digital camera.

Applicant argues that Richter does not disclose a multi-axis digital measuring device as described according to applicant's specification.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a multi-axis measuring machine, having linear or rotary axis of motion) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that there is no suggestion to combine Richter with Flint.

In response, the Examiner maintains that both Richter and Flint are each concerned with duplicating parts with by using digital cameras in combination with other devices. Flint goes on to further disclose a laser scanning device mounted on measuring device wherein a part to be manufactured is transferred from a first workstation to a second workstation in order manufactured into the desired shape. Since both Richter and Flint are each concerned with duplicating parts in an effort to reproduce the original, then one of ordinary skill in the art would have been properly

motivated to modify Richter based on the teachings of Flint thereby rendering applicant's claimed invention obvious.

In addition to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Richter as previously explained above clearly discloses a multi-axis digital measuring device. Flint discloses the use of a multi-axis digital measuring device for measuring the contours of a part to be repaired. Flint discloses a laser scanning device mounted on measuring device wherein a part to be manufactured is transferred from a first workstation to a second workstation in order manufactured into the desired shape. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to manufacture the part of Richter according to the teachings of Flint, thereby rendering applicant's claimed invention obvious.

Finally, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).



***Conclusion***

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information. M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

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10. If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, or fax (703) 872-9301 or by email to [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermie Cozart whose telephone number is 703-305-0126. The examiner can normally be reached on Monday-Thursday, 7:30 am - 6:00 pm.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Vidovich can be reached on 703-308-1513. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

JC

June 14, 2003

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
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